

REMARKS

Applicant respectfully requests reconsideration in view of the following remarks.

Claims 26-32 Are Patentable Over Chandrasekhar

Claims 26-32 stand rejected under 35 U.S.C. § 103 as unpatentable over Chandrasekhar (WO 00/69525). Applicant respectfully disagrees.

In the Office Action mailed on October 19, 2007, Claims 26-32 were rejected as anticipated by Chandrasekhar. Applicant then argued that Chandrasekhar failed to disclose, among other limitations, a holder arranged to support a portable electronic device in at least two orientations and a wireless communication device mounted to communicate with the portable electronic device positioned within the holder. Moreover, Applicant argued that Chandrasekhar failed to disclose that the holder was formed of a material that was generally transparent to wireless signals and that was optically opaque.

The Examiner now has rejected the same claims as obvious over, rather than anticipated by, Chandrasekhar. Specifically, the Examiner has argued that it would have been obvious to modify Chandrasekhar to have a wireless communication system and that Chandrasekhar could support a portable electronic device in at least two orientations (“holder could hold the PED in various orientations – claim does not specify if functional in at least two orientations”). Further the Examiner has argued that it would be obvious for the holder to be formed of a material that is generally transparent to wireless signals and that is optically opaque for a wireless communications device to transmit.

Chandrasekhar

Chandrasekhar disclosed an exercise machine that had a cradle. *Abstract*. A personal electronic device (PED) was inserted into the cradle on the exercise machine. *Abstract*. A PED was known to communicate “via a dedicated data link or telephone line to establish communication with another computer, facsimile or PDA.” *See page 1, lines 18-20*. Prior to Chandrasekhar, users could input information (such as a desired level of difficulty, hill profile, etc.) directly into an exercise machine via an input device, such as a keypad. *See page 2, lines 5-10*. Chandrasekhar was constructed to allow one to obtain, store and analyze data relating to an exercise routine. *See page 2, lines 28-30*.

The PED was received by a first housing, which was operatively connected to a given piece of exercise equipment so as to be able to transfer data generated by the control and monitoring device of the exercise equipment when the PED was connected to the control and monitoring device of the exercise equipment. *See page 3, lines 12-18.* The data transferred to the PED then was transferred to a data analyzer located aware from the exercise equipment. The data was transferred to the data analyzer (i.e., a personal computer) by plugging the PED into a second housing element. *See page 3, lines 18-27.* Data from the PED also could be used to control the exercise equipment. *See page 3, lines 28-30.*

The first housing element (i.e., cradle) preferably is physically mounted to the exercise equipment. *See page 4, lines 8-12.* “The housing element includes recess [sic] for receiving the PED, and a serial data terminal or connector.” *See page 4, lines 12-13 (emphasis added).* “The housing element and recess allows the PED to be received firmly therein, while automatically aligning the data terminals of the PED and the housing element.” *See page 4, lines 15-17 (emphasis added); see also page 6, lines 9-14.*

Claim 26

Claim 26 recites, among other limitations, a wireless communication system comprising a holder arranged to support a portable electronic device in at least two orientations. Claim 26 also recites, among other limitations, the holder being formed of a material that is generally transparent to wireless signals and that is optically opaque.

First, with respect to the “at least two orientations,” the Examiner has argued that Chandrasekhar “discloses a holder arranged to support a portable electronic device in at least two orientations abstract (holder could hold the PED in various orientations-claim does not specify if functional in at least two orientations).” Applicant submits that this is incorrect. The following is quoted from page 10, lines 11-29:

Referring now to FIGS. 3a-3c, a first embodiment of the first housing element 102 is described. FIGS. 3a, 3b, and 3c are front, side and top plan views of the housing element 102, respectively. It will be recognized that the description provided herein is also applicable to the second housing element 106. As shown in the Figures, the housing element 102 comprises a substantially flat base member 300 and three substantially vertical wall members 302, 304, 306 attached to the base member 300 on three sides, thereby forming a recess 305 therein. The front region 308 of the housing element 102 is open to facilitate user access to the displays and controls of the PED 110 (not shown) received within

the recess 305. The PED 110 is inserted into and slides along a channel 310 formed within the recess 305 of the housing element 102. The channel 310 is partially formed by two sliding tracks 314a, 314b which are formed on the interior of the side walls 304, 306. These sliding tracks are positioned so as to allow the PED to fit vertically within the channel 310, and to align the data terminal 116 on the bottom surface of the PED 110 with the data terminal 122 of the housing element 102 such that the two data terminals 116, 122 mate and form electrical contact when the PED is inserted into the channel. The sliding tracks 314a, 314b further act to firmly retain the PED 110 in its operational configuration within the housing element 102 during use.

Thus, Chandrasekhar disclosed a construction that limited the orientations of the PED relative to the housing element to the single orientation in which the data terminals would mate.

While Chandrasekhar also disclosed that other housing constructions were possible (*see page 11, lines 14-17*), Chandrasekhar did not contemplate providing a housing element that could accommodate the PED in more than one orientation. The only reason one would place a PED in the housing of Chandrasekhar was to cause data transfer, which required mating of the data terminals, which in turn required proper orientation of the PED relative to the housing.

Even following the Supreme Court decision of *KSR International Co. v. Teleflex Co.*, the law of obviousness forbids the formulation of an obviousness rejection based upon hindsight. In this case, one of the differences between the claimed invention and the prior art is the holder that is arranged to support a portable electronic device in at least two orientations. While it is no longer required that the prior art reference teach or suggest all of the claim limitations, the Examiner must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. Here, there has been no clear articulation of any reasons why the claimed invention would have been obvious.

Moreover, the modification of Chandrasekhar made by the Examiner (i.e., placing the PED in the holder in more than one orientation) would have made Chandrasekhar unusable for its intended purpose. Due to the positioning of the terminals, Chandrasekhar provided only a single orientation for alignment of the terminals. Orienting the PED in other orientations would have deterred electrical connection and, therefore, such reconfiguring of Chandrasekhar would have rendered Chandrasekhar unusable for its intended purpose. Such a modification, therefore, would not have been obvious at the time of the invention.

Because the Examiner has failed to articulate why one would have modified Chandrasekhar to arrive at the claimed invention and because such a modification would have rendered Chandrasekhar unusable for its intended purpose, Claim 1 is patentable.

Next, with respect to the holder being formed of a material that is generally transparent to wireless signals and that is optically opaque, such a construction was not disclosed by Chandrasekhar. The Examiner has simply stated: “If [sic] would further be obvious for said holder to be formed of a material that is generally transparent to wireless signals and that is optically opaque for a wireless communication device to transmit.”

“Rejections cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ.2d at 1396. While enabling transmission may lead one to a material that is generally transparent to wireless signals, the Examiner has provided absolutely no rationale that would lead one to an optically opaque material that also is generally transparent to wireless signals. Thus, the Examiner has failed to provide a rationale for finding obvious the formation of the holder of a material that is generally transparent to wireless signals and that is optically opaque.

For at least this reason as well, Claim 26 is patentable over Chandrasekhar.

Claims 27-32

Claims 27-32 depend from Claim 26. Thus, Claims 27-32 are patentable over Chandrasekhar for at least the same reasons that Claim 26 is patentable over Chandrasekhar.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history

Application No.: 10/698,236
Filing Date: October 31, 2003

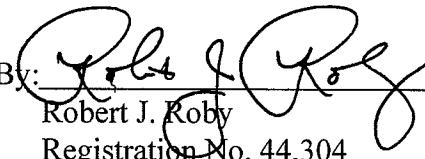
shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6.10.2008

By: 

Robert J. Roby
Registration No. 44,304
Attorney of Record
Customer No. 20995
(949) 760-0404

5483960:ah
060608